16-255

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 587.

A. S. BADGER, COLLECTOR OF CUSTOMS OF THE PORT OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

D. L. RANLETT & COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 24, 1881.

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a UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

A. S. BADGER, COLLECTOR, &C., PLAINTIFF IN error,
vs.
D. L. RANLETTE & CO., DEFENDANTS IN ERROR. } No. 9263.

A. H. Leonard, U. S. att'y for plaintiff in error.
Kennard, Howe & Prentiss, esq's, for defendants in error.
Writ of error returnable to the Supreme Court of the United States, at the city of Washington, D. C., the second Monday of October, A. D. 1881.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR OF CUSTOMS FOR the port of New Orleans. } No. 9263.

Petition.— Filed January 13th, 1881.

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of David L. Ranlett and Edward L. Ranlett, of the city of New Orleans, and citizens of the State of Louisiana, and who compose the commercial firm of D. L. Ranlett & Co., of said city, respectfully shows—

1. That your petitioners, during the times hereinafter set forth, and for some years prior thereto, have composed said commercial firm of D. L. Ranlett & Co., of New Orleans, engaged, among other
2 business, in importing the articles hereinafter set forth.

2. That on or about the months of September and October and November, 1880, your petitioner' imported from England to the port of New Orleans sundry manufactures of iron, viz, certain invoices of black iron cotton-ties, the property of your petitioners, said firm, in bundles of thirty strips each, cut to the required length of eleven feet, and sundry buckles attached, being thirty buckles to each bundle of ties, of which importations full particulars are given in the three certified copies of custom-house entries hereto annexed and made part hereof, and dated respectively Sept. 30, 1880, Sept. 30, 1880, and Oct'r 5, 1880, and hereunto annexed and made part hereof as Exhibits A, B, & C.

3d. That your petitioners have, in importing said goods, wares, and merchandise, in all respects complied with and observed the customs laws of the United States, and have been ready and willing to
3 pay the duties on said goods, as required by said customs laws.

That said duties justly and truly amounted to, and amount according to said customs laws to, the sum of $2,883.40 *dollars*, and said sum your petitioners duly offered to pay to Algernon S. Badger, the collector of the port of New Orleans.

4. That said Algernon S. Badger, collector of customs of said port, unlawfully refused to receive the said sums and permit your petitioners

to have and control said property as duty paid, and illegally required your petitioners to pay the sum of $6,617.05 *dollars* for duties on said goods, as will more fully appear by the statement hereto annexed and made part hereof as Exhibit D, which payments your petitioners were obliged to make under duress of their said property, and made under written protest and notices duly made with and given to the said collector, according to the requirements of the statutes of the United States.

4 That on said importations of your petitioners' said merchandise they were also unlawfully required by said collector to pay, and did pay, unto him for duties thereon, and under like duress and protest, the further sum of forty-two $\frac{21}{100}$ dollars, being the net liquidated deficit unlawfully claimed and so collected, and not included in said Exhibit D, but which fully appear on the face of said Exhibits A to C, inclusive.

5. That the only proper and lawful duty on said property being the said "blacked cotton-ties," composed as aforesaid of said strips and buckles, and each of them was and is thirty-five per centum ad valorem and no more, and amounted to the sum of $2,283.40 as aforesaid and no more, and that the amounts which your petitioners have been compelled to pay in the premises unlawfully, and in excess of legal duties and by duress and under protest, was and is the sum of $3,775.86 *dollars*.

5 6th. That your petitioners on each occasion as aforesaid, when said sums have been so exacted, have, within ten days after the ascertainment and liquidation of the said duties as claimed, given due notice in writing to the said collector on each entry, setting forth therein distinctly and specially the grounds of their objection thereto respectively; and the said collector having persisted in his illegal demand, your petitioners did, within thirty days from said ascertainment and liquidation, appeal therefrom to the Secretary of the Treasury on each of said entries respectively, and the said Secretary of the Treasury has, within 90 days prior to the filing of this petition, to wit, on or about the 18' December, 1880, decided said questions adversely to your petitioners' claim, and held that the action of said collector Badger was and is lawful.

Now, your petitioner' shows that the action of said Secretary was erroneous; that said sum of $3,775.86 was illegally exacted by said

6 duress, and that they are entitled to recover the same from said Algernon S. Badger as aforesaid.

That even if the strips of iron composing part of said ties are not to be admitted at 35 per centum ad valorem (which is denied), the duty on the said buckles could not lawfully have exceeded that rate, and on that item alone your petitioners are entitled to recover the sum of $750.

But your petitioners show that the said ties, so composed of said strips and buckles and so bundled as aforesaid, constitute a manufacture of iron for a special and important purpose, and are subject as such to only a duty of 35 per centum ad valorem, as manufactures of iron not otherwise provided for. (Rev. Stat. U. S., 1878, p. 467.)

Premises considered, your petitioners pray that said Algernon S. Badger, collector of customs of the port of New Orleans, may be duly cited and condemned to pay petitioners the sum of three

7 thousand seven hundred and seventy-five $\frac{86}{100}$ dollars, with interest from judicial demand, and for all costs and general relief.

(Signed) KINNARD, HOWE & PRENTISS,
Att'ys for Petitioner'.

8 EXHIBIT A.—FILED WITH PETITION.

[Entry for consumption on immediate arrival.]

Entry for consumption of merchandise imported by D. L. Ranlett & Co. in the Brit. S. S. Mississippi, whereof Gibson is master, from Liverpool, on the 30th day of Sept'r, 1880.

Marks.	Nos.	Packages and contents.	Quantities.	Invoice. Currency.
		Seven hundred & fifteen bundles blacked iron cotton ties, $\frac{1}{8}$x18, Arrow, No. 4, 30 buckles & 30 stripes to ea. b'dle.....	38,215	146. 4. 4 3. 13. 1 149. 17. 5 $729

Strips..... 37,901 lbs.
Buckles..... 2,681 "

39,682 lb.

Buckles..... $51

1½c. lb., value, 39,682 lbs., 729.

$729, 38,215 lbs., @ 1½c..... $573 23

(S'g.) J. B. L.
(S'g.) J. P.

Oct. 1, '80.
(S'g.) L. H. M.

$729, 39,682 lbs., @ 1½c..... $595 23
Paid..... 573 23

Deficit..... $22 00

(S'g.) O. L.

Passed naval office Oct. 21, '80.
(S'g.) J. W.

Oct. 23,'80.
(S'g.) L. H. W.

(Liq.) Oct. 29, '80.
(S'g.) J. M. H.

(Signed) D. L. RANLETTE & CO.

Oath, 20c.; permit, 20; invoice, 20; bond, 40—$1.00.

DISTRICT & PORT OF NEW ORLEANS,
Collector's Office, Nov. 22, 1880.

I hereby certify the above to be a true copy of the original on file at this office.

(Signed) J. D. CRAWFORD,
Dy Collector.

Consignee, importer, or agent's oath.

9 I, , do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New Orleans, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the whereof is master, from , for account of any person whomsoever, for whom I am authorized to enter the same (except what is now being entered for warehousing); that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice, or in the account now tendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear, that to the best of my knowledge and belief the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost of fair market value, at of said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

Sworn to this , 187 , before me.

Deputy Collector.

Bond 803.
(S'g.) S. G.
(S'g.) J. P.

Owner's oath, in cases where goods, wares, and merchandise have been actually purchased.

I, D. L. Ranlett, do solemnly and truly swear that the entry now delivered by me to the collector of New Orleans, contains a just and true account of all the goods, wares, and merchandise imported by or consigned to order in the Brit. S. S. Mississippi, whereof Gibson is master, from Liverpool; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise; of all charges thereon, including charges of purchasing, carriages, bleaching, dying, dressing, finishing, putting up, and packing, and no other discount, drawback, or bounty but such as has actually been allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; that they are in the state in which I actually received them; and that the said invoice and declaration thereon are in all respects true, and

were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not, in the said entry or invoice, concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandse, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

(S'g'd) D. L. RANLETT.

Sworn to this 1st day of Oct., 1880.

(Signed) J. D. CRAWFORD,
D'y Collector.

(Indorsed:) (A.) No. 2562. Impost entry. Sept. 30, 1880. Brit. S. S. Mississippi, master; from Liverpool; D. L. Ranlett & Co. Duty paid, $573.23; ascertained duty, $595.23; deficit, $22.00; excess ; liquidated October 20, 1880; to be refunded $

(S'g') J. M. H.

Paid Oct. 1, 1880. Permit issued .

10 EXHIBIT B.—FILED WITH PETITION.

Warehouse entry.—Entry of merchandise, imported Sept'r 30, 1880, by D. L. Ranlett & Co., in the Brit. S. S. Mississippi, Gibson, master, from Liverpool.

Marks.	Nos.	Packages and contents.	Quantities.	
Three thousand five hundred and ten bundles blacked iron cotton-ties (Kennedy buckles), thirty buckles and thirty strips to ea. bundle			819,216	
			182,520	698. 15. 8
Charges				4. 6
				699. 0. 2
Commission, 2½ %				17. 9. 6
				716. 9. 8
				$3,487

1½ c. lb., 175,987.
Value, $3,487.
Total, $3,487.
Dutiable value on each package, 99c.

Ties, $3,238	162,825
Buckles, 249	13,162
	175,987
$3,487, 175,987 lb., @ 1½ c.	$2,639 81

Liq., Oct. 20, '80.
(S'g.) J. M. H.

Passed naval office, Oct. 20, 1880.
(S'g.) J. W.

$3,487, 182,520 lbs., @ 1½c. $2,737 80
(S'g.) J. B. L.
(S'g.) J. P.
(Signed) D. L. RANLETT & CO.

Oath, 20; permit, 20; invoice, 20; order, 20; bond, 40—1.20; s. oath, 20—1.40.

(S'g.) L. H. W.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, Nov. 22, 1880.

I hereby certify the above to be a true copy of the original on file at this office.

(Signed) J. D. CRAWFORD,
Dy Collector.

11 Bond 378.

(S'g.) S. G.

(S'g.) J. P.

Owner's oath in cases where goods, wares, and merchandise have been actually purchased.

I, D. L. Ranlett & Co., do solemnly and truly swear that the entry now delivered by me to the collector of New Orleans contains a just and true account of all the goods, wares, and merchandise imported by or consigned to order in the Brit. S. S. Mississippi, whereof Gibson is master, from Liverpool; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise; of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up and packing, and no other discount, drawback, or bounty but such as has actually been allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; that they are in the state in which I actually received them; and that the said invoice and declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

(Signed) D. L. RANLETT.

PORT OF NEW ORLEANS:

Sworn to this 1 day of Oct., 1880, before me.

J. D. CRAWFORD,
Deputy Collector.

Consignee, importer, or agent's oath.

I, , do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New Orleans are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the , whereof is master, from , for account of any person whomsoever, for whom I am authorized to enter the same (except what is now being entered for); that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the

entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now tendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

And I do further solemnly and truly swear that to the best of my knowledge and belief the owner of the goods, wares, and merch ndise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost of fair market value at of said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

PORT OF NEW ORLEANS:

Sworn to this , 18 , before me.

Deputy Collector.

To the COLLECTOR OF THE PORT OF NEW ORLEANS:

SIR: It is requested that the merchandise described in the within entry, per Brit. S. S. Mississippi, from Liverpool, be deposited and stored in No. 1, cl. 3, and do hereby constitute and appoint the proprietor of the same agent to have the joint custody of such goods and possession of the key to said premises under the provisions of the sections 2960, 2961, and 2962 of the Revised Statutes of the United States.

(Signed) D. L. RANLETT & CO.

(Indorsed:) 378. No. 2549. Warehouse entry. Sept'r 30, 1880. Brit. S. S. Mississippi, from Liverpool. D. L. Ranlett & Co. Completed, O K. Liq. Oct. 20, 1880. (S'g.) J. M. H. Permit issued, . Passed naval office.

Bond, 378.

12 EXHIBIT C.—FILED WITH PETITION.

[Entry for consumption on immediate arrival.]

Entry for consumption of merchandise imported by D. L. Ranlette & Co., in the Brit. S. S. Algitha, whereof Bervise is master, from Liverpool, on 8 Oct., 1880.

Marks.	Nos.	Packages and contents.	Quantities.	Invoice currency.	1¼c. lb.	Value.
Four thousand three hundred & ten bundles blacked iron cotton-ties 1⅛ × 18, arrow No. 4, thirty buckles & thirty strips to ea. bundle, 11 ft.			100. 1. 8 224. 120	£833. 9. " 4. 6	225, 467 lbs.	
Charges				£833. 13. 6 20. 16. 10		
Commiss. 2½ %				£854. 10. 4		
				£834, 158		£834, 158 50 £834, 108

Less value 52 b'dles short.

$4,158, 224,120 lbs, 1½c..... $3,361 80
Oct. 9, '80.

C. B. F.
(Sg.) J. P.
(Sg.) L. H. W.

$4,108, 225.467 lb., 1½c..... 3,382 01
Paid..... 3,361 80

Deficit..... $20 21
Nov. 8, '80.
(Sg.) L. H. W.
Liq. Nov. 3, '80.
(Sg.) J. M. H.
Passed naval office Nov. 4, 1880.
(Sg.) J. W.

B. L.—Oath 20; permit 20; invoice 20; bond 40—$1.00.
(Signed) D. L. RANLETT & CO.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, Nov. 22, 1880.

I hereby certify the above to be a true copy of the original on file at this office.
(S'g'd) J. D. CRAWFORD,
D'y Collector.

13 *Consignee, importer, or agent's oath.*

I, , do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New Orleans are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the , whereof is master from for account of any person whomsoever, for whom I am authorized to enter the same (except what is now being entered for warehousing); that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now tendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that to the best of my knowledge and belief the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual

cost of fair market value, at of said goods, wares, and merchandise, all charges thereon and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

Sworn to this , 187 , before me ,
Deputy Collector.

Bond 387.
(Sg.) S. G.
(Sg.) J. P.

Owner's oath, in cases where goods, wares, and merchandise have been actually purchased.

I, D. L. Ranlett, do solemnly and truly swear that the entry now delivered by me to the collector of New Orleans, contains a just and true account of all the goods, wares, and merchandise imported by or consigned to order in the Brit. S. S. Algitha, whereof Barovise is master, from Liverpool; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares and merchandise; of all charges thereon, including charges of purchasing, carriages, bleaching, dy'ing, dressing, finishing, putting up and packing, and no other discount, drawback, or bounty but such as has actually been allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; that they are in the state in which I actually received them, and that the said invoice and declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not, in the said entry or invoice, concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

(Signed) D. L. RANLETT.

Sworn to this 9th Oct., 1880.
(Signed) J. D. CRAWFORD,
Dy Collector.

(Indorsed:) No. 2699. Impost entry, Oct. 8, 1880. Brit. S. S. Algitha, , master, from Liverpool; D. L. Rantlett & Co. Duty paid $3,361.80; ascertained duty, $3,382.01; deficit, $20.21; excess l'quid. Nov. 3, 80'; sg. J. M. H.; to be refunded $; paid Oct, 9, 1880; passed naval office, Nov. 4, 1880; permit issued .

14 EXHIBIT D.—FILED WITH PETITION.

Date of entry.	Of liquidation.	Vessel.	No. of bundles cotton-ties.	Lbs.	₰	Weight.	Duty.	Amount.
Sept'r 30	Oct. 20	S. S. Mississippi.	715	149. 17. 5	729	39. 682	@ 35 % ad. val.	$222 15
" 30	" 20	" " "	3,510	716. 9. 8	3,487	175. 987	" " "	1,220 45
Oct. 8	Nov. 3	" " Algitha	4,310	854. 10. 4	4,108	225. 467	" " "	1,437 80
								$2,883 40

D.

Am't charged for same, at 1½ cents per lb, and paid by pl'ffs	595 23 2,639 81 3,382 01	
		6,617 05
Add for deficit		42 21
Claim		6,659 26
Deduct lawful duties as above at 35 % ad val		2,883 40
Excess claimed in this suit		$3,775 86

15 *Citation.—Issued January 13th*, 1881.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &C. } No. 9263.

To Algernon S. Badger, collector of customs of the port of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of
16 New Orleans, this 13th day of January, A. D. 1881, and of the Independence of the United States of America the 105th year.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received January 13th, 1881, by the U. S. marshal, and on the 15th day of same month and year, I served a copy of the within petition and citation on A. S. Badger, collector, defendant herein, by handing a copy of the same to him in person, in the city of New Orleans, La.

(Signed) THOMAS BOSWELL,
D'y U. S. Marshal.

Answer.—Filed January 18th, 1881.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &C. } No. 9263.

17 Defendant for answer to plaintiff's petition, denies all and singular allegations thereof; prays that plaintiff's demand be rejected, and to be hence dismissed with costs.

(Signed) A. H. LEONARD,
U. S. Att'y.

Verdict.—Extract from the minutes, April term, 1881.

NEW ORLEANS, *Wednesday, May 18th*, 1881.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

D. L. RANLETT & CO. *vs.* A. S. BADGER, COLLECTOR, &c. } 9246.

By consent of counsel, the above cause was taken up—Kennard, Howe & Prentiss for pl'ffs A. H. Leonard, U. S. att'y, for defendant—when the following-named jurors were called and sworn to well and truly try the issues joined in the case:

1. J. A. Vignaud,
2. B. F. Chambers,
3. W. J. McGehan,
4. R. M. Ong,
5. D. R. Graham,
6. Neirlle Smith,
7. R. Meyer,
8. F. D. Charbonnet,
9. C. H. Lee,
10. L. Gimble,
11. F. Meteye,
12. E. P. Pourpart.

And the jury being complete, the court appointed D. R. Graham foreman thereof, and the trial was proceeded with, and after hearing the pleadings and the evidence, and receiving a charge from the court, the said cause was submitted to the jury, who retired to consider on their verdict. After due deliberation, they returned into court, and then and there, through their said foreman, the said jury did render and deliver the following verdict, to wit:

"We, the jury, find a verdict for the plaintiff in the sum of $3,711.65, and that the sample on exhibition in court and in controversy is cotton-ties.

"May 18, 1881.

"D. R. GRAHAM,
"*Foreman.*"

Whereupon, it was ordered that the said verdict be reorded, and it is done accordingly.

19 *Defendant's bill of exceptions.—Filed June 7th*, 1881, *nunc pro tunc as of Jan'y 25th*, 1881.

D. L. RANLETT & CO. *vs.* A. S. BADGER, COLLECTOR. } No. 9192.

Be it remembered that on the trial of this cause, certain facts being conceded, as set forth in note of evidence, and statement of facts filed in the cause in open court, and a sample of the articles of merchandise imported by plaintiff, and described in the petition, having been produced and exhibited to the jury, witnesses having been produced on the part of the plaintiff, and on the part of the defendant, it being claimed on the part of the plaintiff that the imported articles for the recovery of *of* a portion of the duties paid, upon which this suit was brought, should have been classed and subjected to duties as cotton-ties under the designation "manufactured articles, not otherwise provided for," and it being claimed on the part of the defendant that the said imported ar-

D.

Am't charged for same, at 1½ cents per lb, and paid by pl'ffs	595 23 2,639 81 3,382 01	
		6,617 05
Add for deficit		42 21
Claim		6,659 26
Deduct lawful duties as above at 35 % ad val		2,883 40
Excess claimed in this suit		$3,775 86

15 *Citation.—Issued January 13th*, 1881.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &C. } No. 9263.

To Algernon S. Badger, collector of customs of the port of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of
16 New Orleans, this 13th day of January, A. D. 1881, and of the Independence of the United States of America the 105th year.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received January 13th, 1881, by the U. S. marshal, and on the 15th day of same month and year, I served a copy of the within petition and citation on A. S. Badger, collector, defendant herein, by handing a copy of the same to him in person, in the city of New Orleans, La.

(Signed) THOMAS BOSWELL,
D'y U. S. Marshal.

Answer.—Filed January 18th, 1881.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &C. } No. 9263.

17 Defendant for answer to plaintiff's petition, denies all and singular allegations thereof; prays that plaintiff's demand be rejected, and to be hence dismissed with costs.

(Signed) A. H. LEONARD,
U. S. Att'y.

Verdict.—Extract from the minutes, April term, 1881.

NEW ORLEANS, *Wednesday, May 18th*, 1881.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &c. } 9246.

By consent of counsel, the above cause was taken up—Kennard, Howe & Prentiss for pl'ffs A. H. Leonard, U. S. att'y, for defendant—when the following-named jurors were called and sworn to well and truly try the issues joined in the case:

1. J. A. Vignaud,
2. B. F. Chambers,
3. W. J. McGehan,
4. R. M. Ong,
5. D. R. Graham,
6. Neirlle Smith,
7. R. Meyer,
8. F. D. Charbonnet,
9. C. H. Lee,
10. L. Gimble,
11. F. Meteye,
12. E. P. Pourpart.

18

And the jury being complete, the court appointed D. R. Graham foreman thereof, and the trial was proceeded with, and after hearing the pleadings and the evidence, and receiving a charge from the court, the said cause was submitted to the jury, who retired to consider on their verdict. After due deliberation, they returned into court, and then and there, through their said foreman, the said jury did render and deliver the following verdict, to wit:

"We, the jury, find a verdict for the plaintiff in the sum of $3,711.65, and that the sample on exhibition in court and in controversy is cotton-ties.

"May 18, 1881.

"D. R. GRAHAM,
"*Foreman.*"

Whereupon, it was ordered that the said verdict be reorded, and it is done accordingly.

19 *Defendant's bill of exceptions.—Filed June 7th*, 1881, *nunc pro tunc as of Jan'y 25th*, 1881.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR. } No. 9192.

Be it remembered that on the trial of this cause, certain facts being conceded, as set forth in note of evidence, and statement of facts filed in the cause in open court, and a sample of the articles of merchandise imported by plaintiff, and described in the petition, having been produced and exhibited to the jury, witnesses having been produced on the part of the plaintiff, and on the part of the defendant, it being claimed on the part of the plaintiff that the imported articles for the recovery of *of* a portion of the duties paid, upon which this suit was brought, should have been classed and subjected to duties as cotton-ties under the designation "manufactured articles, not otherwise provided for," and it being claimed on the part of the defendant that the said imported ar-

Rule 6 used as buckles

20 ticles should have been classed and subjected to duties under the designation "band or hoop-iron."

And the court having charged the jury at the request of defendant's counsel, as follows:

1st. The burden of the proof is on the plaintiffs, and the presumption is in favor of correctness of decision made by the collector of customs, approved by the Secretary of the Treasury.

2d. If the jury find from the evidence, that the articles imported by plaintiffs consisted of iron bands blackened, cut into lengths of 11 feet, and put up in bundles of 30 with 30 buckles on one band in each bundle, and not permanently attached, that the buckles and the bands as band iron then the fact that the buckles accompany the bands will not prevent the bands from being included in and dutiable under the denomination of band iron.

Now the court further charged the jury that the practical question to be determined by the jury is whether the articles imported by plaintiffs are band, hoop, or scroll iron, or on the other hand, cotton-ties.

21 This question must be determined by mercantile *question must be determined by mercantile* usage, as shown by the testimony in the cause; that if the jury find from the evidence that said articles are cotton-ties, and are known in commerce as such, then they are subject to a duty of thirty-five per cent. ad valorem; but if the jury find that they are band, hoop, or scroll iron, and known in commerce as such, they are subject to a duty of one and a half cents a pound; to which last charge and to each part of the same counsel for defendant then and there duly excepted, and since these matters do not appear of record, presents this his bill of exceptions, and prays that the same may be allowed signed, which is done accordingly.

(Signed) EDWARD C. BILLINGS, *Judge.*

Judgment.—Extract from judgment-book, April term, 1881.

NEW ORLEANS, *Wednesday, May* 18, 1881.

22 Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

D. L. RANLETT & CO.
vs.
A. S. BADGER, COLLECTOR, &C. } No. 9263.

By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment in favor of the plaintiffs, David L. Ranlett and Edward L. Ranlett, composing the commercial firm of D. L. Ranlett & Co., and against the defendant Algernon S. Badger, collector of customs of the port of New Orleans, for the sum of thirty-seven hundred and eleven $\frac{65}{100}$ dollars. It is further ordered that the plaintiffs recover the costs of suit.

Judgment rendered May 18th, 1881.

Judgment signed May 23, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and order for writ of error.—Entered and filed June 15th, 1881.

On motion of A. H. Leonard, attorney of the United States for
23 said district, and counsel herein for defendant, and on representing to the court that the defendant is aggrieved by the final judg-

ment herein rendered against him on the 23d day of May, A. D. 1881, and is advised that there is error thereon to his prejudice, and desires that a writ of error to operate as a supersedeas be granted him therefrom, and on further suggestion that said writ of error is applied for under and in accordance with directions from the Treasury Department of the United States,

It is ordered that a writ of error to operate as a supersedeas be allowed as prayed for, without bond, under provisions section 1001, Revised Statutes of the United States, and be made returnable to the next October term of the Supreme Court of the United States.

24 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern division of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 23 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of D. L. Ranlette & Co., vs. A. S. Badger, collector of customs, No. 9263, of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of August, A. D. 1881.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 12th day of August, A. D. 1881.

EDWARD C. BILLINGS, *Judge.*

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between D. L. Ranlett & Company and A. S. Badger, collector of customs of the port of New Orleans, a manifest error hath happened, to the great damage of the said A. S. Badger, collector of customs of the port of New Orleans, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 15th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 9263. A. S. Badger, collector of customs, plaintiff in error, versus D. L. Ranlett, & Co., defendant in error. Writ of error. Filed June 15, 1881. T. V. Coupland, D'y clerk.

26 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to D. L. Ranlett & Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein A. S. Badger, collector of customs of the port of New Orleans, is plaintiff in error, and you, D. L. Ranlett & Company, are defendants in error, to show cause, if any there be, why the judgment rendered against the said A. S. Badger, collector of customs of the port of New Orleans, as in said motion and order for a writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand eight hundred and eighty-one.

EDWARD C. BILLINGS, *Judge.*

27 (Indorsed:) R. United States circuit court. No. 9263. A. S. Badger, collector of customs, plaintiff in error, vs. D. L. Ranlett & Co., defendants in error. Citation.

Marshal's return.

Received Jul. 22, 1881, by the U. S. marshal, and on the same day, month, and year I served a true copy of the within writ of error on D. L. Ranlette & Co., defendants in error, by handing the same to W. W. Howe, esq., in person, in the city of New Orleans, the said W. W. Howe a member of the law firm of Kennard, Howe & Prentiss, attorneys for the said D. L. Ranlett & Co., accepting service for said defendants in error.

E. S. CURRY,
D'y U. S. Marshal for Eastern Dist. of La.

Personally appeared before me, E. S. Curry, a lawful deputy of Jack Wharton, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within writ of error on the def'd'ts in error herein, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for Eastern Dist. of La.

Subscribed and sworn before me August 1st, 1881.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

(Indorsement on cover:) No. 587. A. S. Badger, collector of customs of the port of New Orleans, plaintiff in error, vs. D. L. Ranlett & Company. E. Louisiana C. C. U. S. Filed 24th September, 1881.

ADDITION TO RECORD 587.

Supreme Court of the United States, October term, 1882.

A. S. BADGER, COLLECTOR, &C., PL'FF IN ERROR, *vs.* D. L. RANLETT & COMPANY. } No. 587. Filed October 14, 1882.

1 U. S. circuit court.

D. L. RANLETT & CO. *vs.* A. S. BADGER, COLLECTOR, &C. } No. 9263.

Note of evidence and statement of facts.

Plaintiffs offer all exhibits attached to petition A, B, C, D, and bill of particulars marked E.

It was admitted that the allegations of petition were correct as to partnership of plaintiffs, ownership and importation of property, amount of same, duties paid, protests, appeals, and affirmance of collector's decision, and the other matters stated in bill of particulars; and the only issue disputed by defense is the question—which is the sole question to be decided—whether the articles of merchandize described in the petition

2 are dutiable under Schedule E as hoop, band, or scroll iron, or as "manufactures of iron not otherwise provided for."

In case the plaintiffs are entitled to recover it is understood that the amount of recovery should be $3,711.65.

A true copy of note of evidence and statement of facts on file.

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, August 9th, 1882.
[SEAL.] T. V. COUPLAND,
D'y Clerk.

3 WASHINGTON, D. C., *October* 10, 1882.

The undersigned agree that the within is part of the record in No. 587 docket of the Supreme Court of the U. S., Oct. term, 1882; and that it shall be printed & added to the record already printed.

S. F. PHILIPS, *S. Gen'l, &c.*
KENNARD, HOWE & PRENTISS,
By JAMES LOWNDES,
Att'ys for the Defendants in Error.

(Indorsed:) No. 9263. U. S. Supreme Court. 1882. October term. No. 587. D. L. Ranlett & Co. vs. A. S. Badger, coll'r, &c. Cert. copy of note of evidence & statement of facts. Filed 14th Oct'r, 1882. This case is now 587 of U. S. Sup. C't, Oct'r term, '82. Office Supreme Court U. S. Filed Oct. 14, 1882. James H. McKenney, clerk.

OFFICE SUPREME COURT U. S.
FILED
OCT 8 1882
JAMES H. McKENNEY, Clerk.

16275

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

BADGER, COLLECTOR, *vs.* RANLETT & Co. } Nos. 586 and 587.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

BADGER, COLLECTOR, *vs.* RANLETT & CO. } Nos. 586 and 587.

BRIEF FOR THE UNITED STATES.

These suits involve the same principles and substantially the same facts, the latter differing only as to the dates at which they occurred.

In the year 1880 Ranlett & Co. imported at New Orleans certain articles liable to duty; and the question duly made by them was whether all duty levied by the collector beyond 35 per cent. ad valorem was not excessive.

The articles are described in the record, viz, the petition, including its schedules. (See verdict, folio 17.) They were *strips* of iron cut into lengths of 11 feet, *blacked*, and in bundles of 30 each, with 30 buckles to each bundle. Folios 2, 8, &c.

The bill of exceptions is as follows:

Be it remembered that on the trial of this cause, certain facts being conceded, as set forth in note of evidence and statement of

facts filed in the cause in open court, and a sample of the articles of merchandise imported by the plaintiff and described in the petition having been produced and exhibited to the jury, witnesses having been produced on the part of the plaintiff and on the part of the defendant, it being claimed on the part of the plaintiff that the imported articles for the recovery of a portion of the duties paid upon which this suit was brought should have been classed and subjected to duties as cotton-ties under the designation "manufactured articles not otherwise provided for"; and it being claimed on the part of the defendant that the said imported articles should have been classed and subjected to duties under the designation "band or hoop iron."

And the court having charged the jury, at the request of defendant's counsel, as follows:

1st. The burden of the proof is on the plaintiffs, and the presumption is in favor of correctness of decision made by the collector of customs, approved by the Secretary of the Treasury.

2d. If the jury find from the evidence that the articles imported by plaintiffs consisted of iron bands blackened, cut into lengths of 11 feet, and put up in bundles of 30, with 30 buckles on one band in each bundle, and not permanently attached, that the buckles can be used as buckles and the bands as band iron, then the fact that the buckles accompany the bands will not prevent the bands from being included in and dutiable under the denomination of band iron.

Now, the court further charged the jury that the practical question to be determined by the jury is whether the articles imported by plaintiffs are band, hoop, or scroll iron; or, on the other hand, cotton-ties. This question must be determined by mercantile usage, as shown by the testimony in the cause; that if the jury find from the evidence that said articles are cotton-ties, and are known in commerce as such, then they are subject to a duty of 35 per cent. ad valorem; but if the jury find that they are band, hoop, or scroll iron, and known in commerce as such, they are subject to a duty of 1¼ cents a pound; to which last charge, and to each part of the same, counsel for defendant then and there duly excepted; and since these matters do not appear of record, presents this his bill of exceptions, and prays that the same may be allowed [and] signed, which is done accordingly.

For error is assigned the court's instructions—

1. That if the goods were and were known as *cotton ties* they could not be at the same time *band iron*.

2. That if not *band iron*, they were subject to a duty of 35 per cent. ad valorem.

The statute involved is as follows (Revised Statutes, section 2504, pp. 465, 467):

> All band, hoop, and scroll iron from one-half to six inches wide, under one-eighth of an inch in thickness, and not thinner than No. 20, wire gauge, 1½ cents per pound. * * *
>
> All other descriptions of rolled or hammered iron not otherwise provided for, 1¼ cents per pound. * * *
>
> Manufactures * * * not otherwise provided for, of brass, iron, * * * 35 per centum ad valorem.

1. The *band iron* described in the first paragraph above is not a specific thing, but generic, and may include many specific articles of different names. Therefore, to say that one sort of band iron has obtained a specific name is not necessarily to say that it no longer belongs to the general class.

All that was done, in the way of *manufacture*, to the strips of iron in contention was to cut them into lengths of 11 feet, and *black* them. *Length* is no criterion in the statute under consideration, so that *cutting* is not a peculiar circumstance here, for in the nature of things that must be an incident to all band iron. Is mere *blackening* an additional stage of *manufacture?*

In Arthur *vs.* Morrison (96 U. S., 108) the question was whether a veil made of silk "to which a certain resinous substance had been applied" that gives it in commerce the name of *crape*, is within the revenue laws

"a silk veil," or is a "manufacture of silk not otherwise provided for." This court held it to be a "manufacture," &c., merely, saying:

> The fact that the veils in question are universally known and recognized among merchants and importers as crape veils, and not otherwise, and are never called or known as silk veils, is to be taken into the account. Although crape is shown to be a material of silk, to which a certain resinous substance has been applied, neither the merchant nor the ordinary buyer understands them to be identical. Neither the merchant who should order a case of crapes and receive one of silk goods, or who should order silk and receive crape, nor the individual purchaser who should order a dress of silk and receive one of crape, or should order crape for mourning and receive silk, would deem that the order had been properly filled. The general understanding concurs in this respect with that of the trader and importer, and must determine the construction to be given to the language of the statute. Especially should this view prevail as to laws made for the government of the importer. His business is regulated by them, and it is but reasonable that, like the language of marine policies and the terms of the law-merchant, supposed to be especially applicable to this class, these laws should be construed as universally understood by the importer and trader.

It seems that this reasoning assumes the existence of some *change of quality* between a silk veil and a *rosined* silk veil, a change effected by rosin, and into the nature of which a court need not inquire, it being sufficiently indicated by the new name.

That is therefore only a case in which a matter not apparent to the court is supposed to be authenticated by something apparent, the thing signified being known *only* by the sign.

Here however it appears that the thing signified is known to the court otherwise than by the sign. For it is submitted that *blacking* a strip of iron (the *cutting* seems out of the case) cannot alter its quality; and that

a court will know that the iron is, *for all purposes which can be served by raising or lowering rates of duty*, the same article that it was before. There is here no ambiguity as to the thing itself, so as to render it proper to resort for certainty to its commercial name.

Suppose that *all* band-iron were to become known commercially (from a chief use of it) as *cotton-ties;* would that circumstance displace the rate of duty?

Suppose, again, that all *Swedish* band-iron (from a superior adaptability) were to become so known; would that circumstance be material for such purpose?

If these questions are to be answered negatively, it is because the change of name must (*in revenue reason*) be founded upon a change caused by *manufacture.*

Is it *manufacture* to *color* a strip of iron; would *blued* whisky-barrel hoops, or *browned* petroleum-barrel hoops be results of separate stages of *manufacture?* If in change of business a blacked cotton-tie were *browned and cut* for *petroleum*, and then again for like reason *blued and cut* for *whisky*, would these (appropriate new names being appended) become successive stages of *manufacture* within the meaning of the revenue laws?

I submit that the reason of the case cited above extends no further than to say that a different *name* is *prima facie* proof of a different *thing;* but *not* that such baptism has *proprio vigore* the effect of rendering an old thing new. It is at best *a judgment of charity.*

I take for granted that the putting the strips up in bundles of *thirty* and placing therein as many *buckles* as *strips* is clearly no *manufacture*, and therefore pass this without remark.

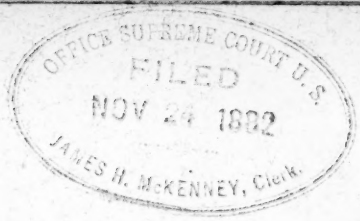
2. But even if the court should overrule the above contention, it seems that his honor below erred in holding that the necessary result of a finding that the articles were not band-iron would be that the proper duty was 35 per cent. *ad valorem.*

If coloring and cutting band-iron, when accompanied by a change of commercial name, amounts to *manufacture*, I submit that it is manufacture of "*rolled or hammered iron*," and not *iron* in general. The band-iron thereby becomes *another description of rolled or hammered iron* within the meaning of the second paragraph quoted above, and therefore taxable at "one cent and one-fourth per pound." This latter description fits more closely the features of the article, and is therefore of course to be preferred to a more vague description.

I submit, besides, that the collocation of paragraphs upon the subject of iron (Revised Statutes, p. 465, &c.) shows that in all the provisions beginning with *sheet-iron*, and down to and including the paragraph now under consideration, Congress was dealing with the subject of *rolled or hammered iron*, so that the tax upon any description of that thing is not to be looked for elsewhere in the schedule.

Inasmuch therefore as it appears by the petition that the importers' ground of protest was that the articles were dutiable at 35 per cent. *ad valorem*, judgment should be rendered in favor of the collector. (Davies *vs.* Arthur, 96 U. S., 148.)

S. F. PHILLIPS,
Solicitor-General.



16-255

IN THE SUPREME COURT OF THE U. S.

OCTOBER TERM, 1882.

Nos. 586 and 587.

BADGER, COLLECTOR,

versus

RANLETT & CO.

Brief for Ranlett & Co., Defendants in Error.

WILLIAM WIRT HOWE,
JOHN H. KENNARD,
For Ranlett & Co., Defendants in Error.

NEW ORLEANS, November 13, 1882.

W. H. Seymour, Print, 74 St. Charles Street, N. O.

IN THE SUPREME COURT OF THE U. S.

OCTOBER TERM, 1882.

Nos. 586 and 587.

BADGER, COLLECTOR,

versus

RANLETT & CO.

Brief for Ranlett & Co., Defendants in Error.

It is matter of general knowledge, that Iron Cotton Ties have been used in baling cotton for over twenty years. They are described in dictionary and cyclopedia. They are devices which have been the subject of ingenious and profitable invention. They have figured for nearly a quarter of a century in patent office reports and the literature of mechanics. They have superseded the use of rope, since rope is not strong enough to hold the cotton which has been compacted by the modern steam compresses, which exercise an enormous pressure.

An Iron Cotton Tie is a combination, and consists essentially of two parts:

1. A strip of iron 11 feet long.
2. An iron buckle.

Both, strips and buckles, are painted with black paraffine varnish, for two purposes:

1. To prevent rust, which would stain the cotton.

2. To prevent danger of fire by friction, caused by vibration on railway trains and the like.

Thus made, these ties are put up in bundles of thirty, each, as a matter of convenience. And in the cases at bar, as matter of convenience also, the 30 buckles are strung, for transportation, on one of the strips of each bundle; just as a dozen clocks may be imported in one package, with their dozen pendulums placed, for convenience and safety, in one bundle and in one corner of the box.

In 1880, Ranlett & Co., the defendants in error, plaintiffs in the lower court, imported from Liverpool to New Orleans a large number of bundles of these Iron Ties. The plaintiff in error, Badger, Collector of the Port of New Orleans, defendant below, imposed a duty on the ties of one and one-half cents a pound upon the theory that they were band iron. Ranlett & Co. were obliged to pay this duty under protest. They claimed that the proper duty was but 35 per centum ad valorem, under the clause which levies that amount on "manufactures * * * not otherwise provided for, of * * iron."

Rev. Stat., Sec. 2504, pp. 465, 467.

It is conceded that Ranlett & Co. took all proper steps which are, by statute, conditions precedent to the right to sue, and that the only disputed questions in the cases were as to the proper amount of duties.

The Pleadings.

The suits were begun by petition, in accordance with the Code of Practice of Louisiana, which is followed on the law side of the federal circuit court, and the exhibits attached to the petitions form part thereof, in the way of averment and definition. Hughes vs. Harrison, 7 Martin N. S. 228.

These exhibits are certified copies of the several entries at the New Orleans Customhouse. Examples of the description of the goods, as thus entered, are as follows; the others being substantially the same:

From Transcript No. 586, at p. 6:

"Two thousand one hundred and ten bundles Blacked Iron Cotton Ties, Kennedy Buckles, thirty buckles and thirty strips to each bundle, 11 feet."

From Transcript, No. 587, at p. 7:

"Four thousand three hundred and ten bundles blacked Iron Cotton Ties, $\frac{15}{16}$ x 18, Arrow No. 4, thirty buckles and thirty strips to each bundle, 11 ft."

Some, therefore, had buckles of the Kennedy patent, some of the Arrow or McComb patent.

In each petition it was alleged, as the gravamen of the action, "that the said ties, so composed of said strips and buckles, and bundled as aforesaid, constitute a manufacture of iron for a special and important purpose, and are subject as such to only a duty of 35 per centum, *ad valorem*, as manufactures of iron not otherwise provided for. Rev. Stat. U. S. 1878, p. 467."

The answer was a general denial in each case.

In each case a note of evidence and statement of facts was agreed upon, and produced before the Court and jury at the trial.

These were at first omitted from the Transcript, by inadvertence of the plaintiff in error, but they have been printed and added to the records. They are the same in each case and are referred to in the bills of exceptions. The following, from No. 586, addition to record, p. 18, will show what was agreed and admitted:

"*Note of evidence and statement of facts.*

"Plaintiff's offered and introduced Exhibits A, B, C and D of petition.

"It was admitted that the allegations of petition were correct as to partnership of plaintiffs, ownership and importation of property, amount of same, and duties paid, and protest, appeals, and affirmance of collector's decision, and that the only issue disputed by defendant is the question—which is the sole question to be decided—whether the articles of merchandize described

in the petition are dutiable under Schedule E as hoop, band, or scroll iron, or as 'manufactures of iron not otherwise provided for' in said schedule.

"In case the plaintiffs be entitled to recover, it is understood that the amount is $3,722.99."

At the trial, the plaintiffs below produced a sample of the Cotton Ties in question, and witnesses to prove their allegations, and especially as to the special manufacture of Iron Cotton Ties, its method and purpose, and the method of their use; in other words, to show that the articles in question were as alleged a "manufacture of iron for a special and important purpose, not enumerated in the schedule E, Rev. Stat. pp. 464, 467."

Bill of exceptions, p. 14 of No. 586, p. 11 of No. 587.

The bill of exceptions is the same in each case, and is as follows:

Be it remembered, that on the trial of this cause, certain facts being conceded, as set forth in note of evidence and statement of facts filed in the cause in open court, and a sample of the articles of merchandise imported by the plaintiff and described in the petition having been produced and exhibited to the jury, witnesses having been produced on the part of the plaintiff and on the part of the defendant, it being claimed on the part of the plaintiff that the imported articles for the recovery of a portion of the duties paid upon which this suit was brought, should have been classed and subjected to duties as cotton ties, under the designation, "manufactured articles not otherwise provided for;" and it being claimed on the part of the defendant that the said imported articles should have been classed and subjected to duties under the designation, "band or hoop iron."

And the court having charged the jury, at the request of defendant's counsel, as follows:

1st. *The burden of the proof is on the plaintiffs*, and the presumption is in favor of correctness of decision made by the collector of customs, approved by the Secretary of the Treasury.

2d. If the jury find from the evidence that the articles imported by plaintiffs consisted of iron bands, blackened, cut into lengths of 11 feet, and put up in bundles of 30, with 30 buckles on one band in each bundle, and not permanently attached, *that the buckles can be used as buckles, and the bands as band iron*, then the fact that the buckles accompany the bands, will not prevent the bands from being included in and dutiable under the denomination of band iron.

Now, the court further charged the jury that the practical ques-

tion to be determined by the jury is whether the articles imported by plaintiffs *are band, hoop, or scroll iron;* or, on the other hand, cotton ties. This question must be determined by mercantile usage, as shown by the testimony in the cause; that, if the jury find from the evidence that said articles are cotton ties, and are known in commerce as such, then they are subject to a duty of 35 per cent. *ad valorem;* but if the jury find that they are band, hoop, or scroll iron, and known in commerce as such, they are subject to a duty of 1½ cents a pound; to which last charge, and to each part of the same, counsel for defendant then and there duly excepted; and since these matters do not appear of record, presents this, his bill of exceptions, and prays that the same may be allowed [and] signed, which is done accordingly.

The jury found a verdict in each case for the full amount claimed, and added that they found the sample on exhibition in court, and in controversy, to be cotton ties. Judgments were rendered accordingly, and the Collector sued out his writs of error.

THE ASSIGNMENTS OF ERROR.

Our opponent assigns for error that the court below was mistaken in saying:

"1. That if the goods were, and were known as *cotton ties*, they could not be at the same time *band iron*.

"2. That if not *band iron*, they were subject to a duty of 35 per cent. *ad valorem*."

And it is, therefore, argued for the government:

1. That on the face of the record the cotton ties in question were nothing but band iron, and the judge must have erred in the third paragraph of his charge.

2. That if the government is wrong in this contention, then it appears on the face of the record that the cotton ties in question are only *rolled or hammered iron*, and, as such, subject to another and different duty, never alluded to in the suits below.

As will be shown, we think these assignments of error are founded on a merely verbal criticism, which leads to an incorrect conclusion: they ignore the pleadings and the scope of the charge as an entirety, and they are practically inconsistent with the agreed statement of facts.

The Collector has not brought up any of the testimony of the numerous witnesses who proved the allegations of plaintiff's petition. It will be presumed that it justified the verdict. *City vs. Babcock*, 3 Wallace, 244. And it will also be presumed that the charge of the judge, as applied to such evidence, was correct. *Railroad Company vs. Hanning*, 15 Wallace, 649.

Looking then at the record, such as it is, we find the pleadings as above summarized, and the statement of facts as agreed upon by counsel. We find that witnesses were produced by the importers to establish their averments, as to special manufacture and purpose of the ties. We find that a sample bundle was laid down before the jury, which must have consisted of thirty ties, each composed of a strip of iron cut to the length of 11 feet, and varnished with the black varnish described above, and a certain buckle, also varnished. Looking at this sample, the jury were told that there was but one question for them to solve, and this was, in the language of the statement of facts and the bill of exceptions, the question whether these articles were band iron, or were certain manufactures of iron not otherwise enumerated in schedule "E," and called in the markets Cotton Ties. With respect to this question, and as a guide to its correct solution, they were given by the Court three instructions:

1. At the request of the government, they were told that the burden of proof was on the importers to make out their case by a preponderance of evidence, the presumption being in favor of the correctness of the decision of the Collector and the Secretary.

2. At the request of the government, they were told substantially, *that if the strip of which each tie is in part composed could be used as band iron, then it must pay duty as such.*

3. They were told, substantially, that the one question submitted to them must be determined by mercantile usage, as shown by the testimony in the cause; that if they found from the evidence that the articles were cotton ties and known in commerce as such, then they are subject to a duty of thirty-five per centum ad valorem; but if, on the other hand, they found

from the evidence that *they were hoop, band or scroll iron*, and known in commerce as such, they are subject to a duty of one and a half cents per pound.

The jury having found verdicts, as above, must have found:

1. That the allegations of the importers were established by a preponderance of proof; that the articles in question were not band rion, but were manufactures of iron not otherwise provided for in the schedule; and that the Collector and Secretary were mistaken in their decision. This in response to the first paragraph of the charge.

2. That the strips of iron, of which each tie was in part composed could not be used as band iron. This in response to the second paragraph of the charge.

3. That the articles in question were not band, hoop or scroll iron; but were cotton ties, that is, were the devices described in the pleadings of the importers, each being a combination of a varnished strip of iron of a specific length and a varnished buckle of a specific form.

Viewing the case then as an entirety, we submit that the assignments of error propounded for the government have no merit. In the first place, the judge below did not use the language which these assignments seem to impute to him. In the second place, if the third paragraph of the charge can be made by verbal criticism to mean what these assignments imply, yet such meaning can only be extracted by ignoring the scope of the charge as an entirety.

In *Magniac vs. Thompson*, 7 Peters, 348, it was held that in examining a charge "for the purpose of ascertaining its correctness, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages and to decide upon them without attending to the context, or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. In short, we are to construe the whole as it must have been under-

stood, both by the court and jury at the time when it was delivered." P. 389.

And even if it should be held that there was verbal inaccuracy in the third paragraph of the charge, which we deny, yet it could not have misled the jury under the circumstances, and is no cause for a new trial.

Insurance Co. vs. Trefz, 104 U. S., p. 205.

The Charge as a Whole.

Tested by these familiar rules, and viewed as it should be, in connection with the pleadings, statements of fact and documents in the record, and the testimony presumed to have been given, as stated in the bill of exceptions, the charge follows the rules which have been laid down by this Court in many cases. The first two paragraphs were given at the request of the Collector, and of course are not complained of. If there be error in them, it is to our prejudice. We might, under some circumstances, complain of the second paragraph, which implies that if the strips which form part of our ties could be used as band iron, they would have to pay duty as band iron. This goes too far in favor of the government. But inasmuch as the jury have found that these strips cannot be used as band iron, we do not complain. On the contrary, we think that such finding, in itself, concludes this controversy in our favor. If the strips cannot be used as band iron, and if, as is plain, the buckles cannot in any rational view be band iron, the decision of the Collector in the premises was evidently erroneous.

The last paragraph of the charge is the only one objected to by the collector. When construed with those he requested, it is merely a brief statement of the jurisprudence of this Court. We may properly apply to it the language used in Tyng vs. Grinnell, 92 U. S. 470, as follows:

"Authorities which support the ruling of the court are very numerous, and quite as decisive as they are numerous. Tariff laws are passed to raise revenue; and for that purpose substances

are classed according to the general usage and known denominations of trade.

"Whether a particular article is designated by one name or another in the country of its origin, or whether it is a simple or mixed substance, is a matter of very little importance in the adjustment of our revenue laws, as those who frame such laws are chiefly governed by the appellations which the articles bear in our own markets and in our domestic and foreign trade. United States vs. Smith, 9 Wheat. 438.

"Laws regulating the payment of duties are for practical application to commercial operations, and are to be understood in a commercial sense, and this Court, sixty years ago, decided that Congress intended that they should be so administered and understood. *United States vs. Goodale*, 8 Pet. 279. Such laws, say this Court, are intended for practical use, and application by men engaged in commerce; and hence, it has become a settled rule, in the interpretation of statutes of this description, to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. Elliott vs. Swartwout, 10 Pet. 151.

"Suffice it to say, without multiplying authorities, that the rule of law is settled, that the question, whether an imported article is or is not known in commerce by the word or terms used in the act imposing the duty, is a question of fact for the jury, and not a question of construction."

To the same general effect are the cases of *Barlow vs. The United States*, 7 Peters at p. 409, and *Arthur vs. Cumming*, 91 U. S. 362.

In *Arthur vs. Morrison*, 96 U. S. 119, the question being whether veils made of silk, but known commercially as crape veils were silk veils, and liable to a duty of 60 per centum, or were manufactures of silk not otherwise provided for and liable to but 50 centum, this Court said:

"The fact that the veils in question are universally known and recognized among merchants and importers as crape veils, and not otherwise, and are never called or known as silk veils, is to

be taken into the account. Although crape is shown to be a material of silk, to which a certain resinous substance has been applied, neither the merchant nor the ordinary buyer understands them to be identical. Neither the merchant, who should order a case of crapes and receive one of silk goods, nor the individual purchaser who should order a dress of silk and receive one of crape, or should order crape for mourning and receive silk, would deem that their order had been properly filled. * * In the present case, it is admitted by the demurrer that the goods in question were never understood by merchants and importers to be silk veils. They cannot therefore be said to fall within the enumerating clause of the statute, but come under the head of such as are not otherwise provided for, and are subject to the duty of fifty per cent. only."

In *Recknagel vs. Murphy*, 102 U. S. 197, the question being whether the articles imported were "argols" or "argols crude," this Court said of the charge of the lower judge:

"The Court [below] after recapitulating with entire fairness the substance of the testimony, said to the jury; 'The only question for you to determine is whether these argols were argols crude, those known to commerce as such, or whether they were argols that were more or less refined.' This instruction was clear and accurate, and it covered the entire ground of the controversy. Nothing more was necessary to be said. No amount of verbiage would have improved it. The jury could have had no difficulty in applying it intelligently to the facts before them. * * In cases like this, the law recognizes the authority of those engaged in commerce and adopts necessarily and as conclusive the meaning which they have given to words and phrases employed in their daily business."

See also charges approved in *Arthur vs. Herold*, 100 U. S. 77, and *Mills vs. Russell*, *Id.* 629.

And see *Curtis vs. Martin*, 3 Howard, 106, where this Court approved the charge of the lower judge when he said:

"It has long been a settled rule of construction of revenue laws

imposing duties on articles of a specified denomination, to construe the article according to the designation of such article as understood and known in commerce, and not with reference to the materials of which they may be made, or the use to which they might be applied."

The charge in question also conforms to the understanding of Congress in the premises. In *Arthur vs. Morrison*, cited above, 96 U. S. at p. 111, this Court said:

"That Congress intended duties under the act of 1864, to be imposed according to their [the articles'] commercial designation and that it understood this to be the rule of construing statutes, is also manifest from the first section of the act of Feb. 8, 1875, (18 Stat. 307) upon the subject we are considering.

"A duty of sixty per cent. is there imposed on all goods, made of silk, * * irrespective of the classification thereof for duty by or under previous laws or their commercial designation.' It was no doubt within the power of Congress to abolish a well known rule of construction as it did in the act of 1875 [as to certain silk stuffs] but until so abolished, it remained in force."

The Question of Manufactures.

Having assigned errors as above stated, the government, in its argument, proceeds to claim that the cotton ties in question are nothing but band iron. Upon this point the learned Solicitor General says, brief, p. 3:

"All that was done, in the way of *manufacture*, to the strips of iron in contention, was to cut them into lengths of 11 feet, and *black* them. *Length* is no criterion in the statute under consideration, so that *cutting* is not a peculiar circumstance here, for in the nature of things that must be an incident to all band iron. Is mere *blackening* an additional stage of *manufacture?*"

But in his brief, p. 1, the learned counsel says:

"The articles are described in the record, viz: the petition, including its schedules. (See verdict, folio 17.) They were

strips of iron cut into lengths of 11 feet, *blacked*, and in bundles of 30 each, with 30 *buckles* to each bundle. Folios 2, 8, etc."

So we think it fair to say of the argument above quoted, that:

(1.) It assumes that the articles in contention are mere strips, when it appears, and is found as a fact, that they are a combination device, each composed of a buckle and a strip.

(2.) It ignores the buckles entirely, when it is plain enough that a buckle must be an essential element of an iron tie. Iron cannot be tied like twine.

(3.) It assumes, what does not appear, that the strips were band iron before they were cut into lengths of eleven feet. There is no evidence that they were. Perhaps we may be permitted to state, by way of illustration, what is the fact, that the evidence was that the articles were made directly from blooms of iron. But whether we can allude to this or not, it appears that the jury found that these strips could not be used as band iron; that the articles in contention were not band iron; and there is not a particle of proof that any part of them was ever band iron, much less hoop or scroll iron.

(4.) The argument is not sound, either as matter of logic or precedent. A manufacture of iron is plainly the result of some act of man by which that metal, in some generic form, is modified for some specific use. There is nothing in reason or in authority which requires this act to be very elaborate, or the result to be very complicated. The act of Congress in question does not say that.

To take iron of some generic form and make therefrom buckles of a certain specific pattern, and paint them with a certain black varnish; to make from the same metal certain specific strips of precisely 11 feet in length, and of a width suitable to fit the buckles, and paint them with the same varnish; to produce in this way specific and ingenious combination devices called iron cotton ties, can it be seriously said that these are not acts of manufacture? The authorities answer this question in our favor.

In *U. S. vs. Hathaway*, 4 Wallace, 408, it was held that if a

sawed log, say four feet in length, was split into staves, the mere splitting was an act of manufacture, and the timber was no longer unmanufactured.

In *U. S. vs. Quimby, Id.* 409, the splitting of ash timber into pieces suitable to be made into long shovel handles, was held to be an act of manufacture.

In *Lawrence vs. Allen*, 7 Howard, 785, it appeared that by Act of 1842, India-rubber in bottles and sheets, or otherwise unmanufactured, was exempt from duty, but manufactured articles composed wholly, or in part, of India-rubber were liable to duty. Certain articles known in commerce as "India-rubber shoes," but made by the same process as bottles or sheets, were imported. The government exacted the duty, and the above suit was brought by the importer to recover it back.

The court below was of opinion that the shoes were not a manufactured article, but the Supreme Court reversed this decision, holding that if the articles, when imported, were in condition for immediate use as shoes, they were manufactures of rubber.

This case is very instructive on the question of manufacture. It is defined to be "making an article, either by hand or machinery, into a new form capable of being used and designed to be used in ordinary life." And nothing could be much more simple and rude than the manufacture of the shoes in question in that case. They differed from the bottles only in shape, and not very much in that.

Movius vs. Arthur, 95 U. S. 144, seems in point upon the question whether painting the buckles and strips which composed our ties, was also an act of manufacture, a step in the process. The Court said:

"Patent leather, no doubt, is finished skin, but every finished skin is not patent leather. When a calf skin is tanned and dressed, that is, softened by the application of some lubricating substance, shaven or cleaned, and then blacked, it is said to be finished. To make it patent leather it requires *another process*, to-wit: that of *varnishing*."

In Arthur vs. Morrison, 96 U. S. 108, already quoted by us, it was held substantially that the application of a resinous substance to silk, made crape of it, and that what were known in commerce as "crape veils," were, therefore, not "silk veils," but were "manufactures of silk not otherwise provided for."

Our case is stronger than any of these. Our manufactures are more elaborate and complicated than any of these. The maker formed buckles of a certain pattern. He formed strips of a certain length. He blacked them with the varnish. He fitted them for immediate use as bale ties. *He unfitted them for any use by a rational being as band iron.* And as we have seen, the jury so found as matter of fact.

And now let us apply the test of common experience, as it was applied by this Court in *Arthur vs. Morrison, supra.* If a planter, hastening in these bright November days to bale his cotton, should order fifty bundles of the Cotton Ties, in question here, and we should send him up fifty bundles of band iron, would he, in the language of that decision, "deem that the order had been properly filled?" What could he do with the band iron? He would be in the predicament of one asking for bread and receiving a stone. He could not cut it. He could not tie it. He could not use it. On the other hand, if a cistern maker in our State where cypress tanks are used for catching rain water, should send to us for fifty bundles of band iron to make his capacious hoops, and we should send him fifty bundles of the cotton ties imported in these cases, would he "deem that the order had been properly filled?" And would his natural wrath be appeased if we told him that our distinguished friend, the Solicitor General, had assured us that these strips and buckles, so made and varnished, were really band iron? We humbly think not. He would undoubtedly say, as the jury said in these causes, that Iron Cotton Ties could not be used as band iron, were not band iron, and were not known as such in commerce.

As to Rolled or Hammered Iron.

Finally, it is contended on behalf of the United States, that if the articles imported in these causes are manufactures they are manufactures of rolled or hammered iron and liable to a duty of one and one-quarter cents per pound. Rev. Stat. p. 465. To this we reply:

(1.) No such question can be made here under the agreed statement of facts which is referred to and quoted above, and the bill of exceptions reserved by defendant below. The statement of facts agrees that the sole question to be decided is, "whether the articles of merchandise described in the petition are dutiable under schedule E, as hoop, band, or scroll iron, or as "manufactures of iron not otherwise provided for in said schedule." See No. 586, p. 18, *addendum*.

And the bill of exceptions states that the question was whether the articles were dutiable as cotton ties under the designation "manufactured articles not otherwise provided for," or as "band or hoop iron."

And the Collector's second request brings the question down to this—are the articles band iron?

Now we submit that when the jury said they are not band iron, the government cannot come into this Court some months after and say that the Judge erred, because he did not hunt through the schedule and advise the jury to consider whether they were rolled or hammered iron.

In Edwards vs. Elliott, 21 Wallace, 533, it was held that matters not presented to nor decided by the court below are not assignable for error here, and we suppose that rule to be elementary.

(2.) The statute does not say that "*manufactures* of rolled or hammered iron" shall pay one and one-quarter cents per pound. Such a construction would conflict with many other provisions in the schedule and throw it into chaos. It enacts that "all other descriptions of rolled or hammered iron not otherwise provided for," shall pay this duty. Evidently his refers to rolled

and hammered iron of generic character, not made up into anything else, not manufactured into any specific thing, implement or contrivance, but simply the raw material to be manufactured after importation into something fitted for immediate use.

(3.) There is nothing in the record to show that the articles in question are included in the clause "all other descriptions of rolled or hammered iron not otherwise provided for in the schedule." The jury have found that they are not "hoop, band or scroll iron," and that they are cotton ties, composed of painted strips and painted buckles; but whether they are such rolled or hammered iron, or not, is something in regard to which the record made up by the Collector is silent.

(4.) But it is plain enough, we submit, that these Iron Cotton Ties cannot be simply generic rolled or hammered iron. As well say that a wire mouse-trap is simply "iron wire."

A jewsharp, if we remember rightly, is a very simple musical instrument, composed of two pieces of hammered iron. It might be imported in two pieces, to be put together when used. It would probably be dutiable under the head of musical instruments, at 30 per cent., or toys at 50. But would any one say that it was included in the phrase, "all other descriptions of rolled or hammered iron not otherwise provided for?"

Since about 1849 iron cotton ties have been used in this country. If Congress had desired to impose a special duty on them, or to have them pay the same duty as hoop or band iron, or rolled iron, it could easily have said so.

In *Merritt vs. Welsh*, 104 U. S. 701, this Court said:

"Congress can always adopt such laws and regulations as it may deem expedient for protecting the interests of the government. * * If the quantity of saccharine matter in sugar, or its state of advancement from the raw state to a condition of refinement, is desirable as a dutiable standard, let it be so declared by the laws; and then the merchant will know on what he has to depend. Uncertainty and ambiguity are the bane of commerce. Discretion in the customhouse officer should be

limited as strictly as possible. It has been said with much truth, 'where law ends, tyranny begins.'"

On the same principle we submit that it will be time enough for the Collector to exact more than 35 per centum ad valorem on Iron Cotton Ties when the law shall authorize it. They are not hoop iron or band iron, or rolled iron or hammered iron, in any reasonable construction of those terms. They are articles of manufacture of iron not otherwise provided for in the schedule, and made for a special and important purpose, as alleged by plaintiffs below, and as found by the verdicts. They cannot be rationally used for the purposes of band iron, as the jury found under the second paragraph of the charge. Upon the pleadings and the evidence the jury found every fact in our favor; the record contains no data to show that these findings were erroneous, and we ask that the judgment be affirmed.

Respectfully Submitted,

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JOHN H. KENNARD,

For Ranlett & Co., Defendants in Error.

NEW ORLEANS, November 13, 1882.

NOTE.—Since the foregoing was written, the opinion delivered by Mr. Justice BLATCHFORD, in *The American Cotton Tie Company, etc. vs. Simmons*, No. 47, October Term, 1882, has appeared. It refers to ties with Arrow buckles. Over 5,000 bundles of the ties imported by Ranlett & Co., in cases at bar, were of that pattern. See entries No. 586, p. 6, No. 587, pp. 3, 7. The decision shows that iron cotton ties have been known at least since 1858, and that each tie is a combination consisting of a buckle and a band. If the defendants in that cause had merely made some "band iron," or "hoop iron," or "scroll iron," or "rolled or hammered iron," it is not likely that this Court would have held them for infringement and directed an account of profits.